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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,309	12/12/2003	Eric Keller	13670-001	7335

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EXAMINER	
PARKER, BRANDI P	

ART UNIT	PAPER NUMBER
3624	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/733,309	KELLER ET AL.	
	Examiner	Art Unit	
	BRANDI P. PARKER	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 February 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) *8, 10, 20, 22 and 26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/2009 has been entered.

Acknowledgements

2. This is a non-final office action in response to the Applicant's Request for Continued Examination filed on 2/17/2009.

3. Claims 1-7, 9, 11-19, 21, 23-25 and 27-31 are pending in this Office Action. Claims 1-3, 6-7, 9, 13-19, 21, 25 and 27 are amended. Claims 8, 10, 20, 22 and 26 are cancelled. Claims 28-31 are newly added.

Response to Applicant's Remarks

4. Applicant's arguments with respect to claims 1-7, 9, 11-19, 21, 23-25 and 27-31 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-7, 9, 11-12, 28 and 30-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

7. Based on Supreme Court precedent and recent Federal Circuit decisions, in order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *In re Bilski et al,* 88 USPQ 2d 1385 CAFC (2008). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

Claim 1 is directed towards a method of tracking time spent at a location by a person. As the claims are not sufficiently tied to an apparatus, such as a computer, and/or do not transform the underlying subject matter (from your claim) to a different state, the claimed method is non-statutory and therefore rejected under 35 U.S.C. 101.

8. Claims 2-7, 9, 11-12, 28 and 30-31 are rejected for being dependent upon rejected claim 1.

9. Whether a method appropriately includes particular machines to qualify as a section 101 process may not always be a straightforward inquiry. As Comiskey recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." *In re Comiskey*, 499 F.3d 1365, 1380 (Fed. Cir. 2007), (citing *In re Grams*, 888 F.2d 835, 839-40 (Fed. Cir. 1989)). In other words, nominal or token recitations of structure in a method claim should not convert an otherwise ineligible claim into an eligible one. *Ex parte Langemyr* (BPAI 2008-1495, 2008).

Claim Rejections - 35 USC § 112

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claims 1-3, 6-7, 13-15, 18-19 and 30-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

12. Claims 1-3, 6-7, 13-15, 18-19 and 31 disclose a "processing module" and support for the "processing module" is not found in the specification

13. Claims 30 and 31 disclose "generating an alert" and support for "generating an alert" is not found in the specification.

14. Claims 4-5, 11, 16-17, 21, 23-24, 27, 28-29 are rejected for being dependent upon rejected claims

Examiner's Notes

15. The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as

potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

17. Claims 1-5, 9, 11-17 and 21, 23-25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over P. Deborah Clark (US 5311423) in view of Shotey et al (US 2002/000470)).

18. With respect to **claim 1, 9, 13, 21, 23-25 and 28-29** Clark teaches a location identification codes at a location, the method comprising:

a. providing at least one machine-readable location identification code at the location to provide location information for the location (column/line 2/49-53);

b. providing the person with a mobile reader for reading the at least one machine-readable location identification code at the location, the mobile reader comprising a wireless transmitter (column/line 16/58-63, regarding scanner 74);

Clark does not explicitly teach tracking and recording the arrival and departure time of a person at a particular location. However Shotey teaches:

c. on arrival of the person at the location, reading a first-read machine-readable location identification code in the at least one machine-readable location identification code using the mobile reader and determining an arrival time based on when the first-read machine-readable location identification code is read (paragraph 0064));

d. immediately after the arrival time is determined, in step(c), initiating transmission of the first-read machine-readable location identification code and the arrival time to a remote server using the wireless transmitter, the remote server comprising a processing module and a storage medium for storing service information data (paragraph 0066);

e. adding the arrival time to the service information data using the processing module (paragraph 0064)

f. on departure of the person from the location, reading a last-read machine-readable location identification code in the at least one machine-readable location identification code using the reader and determining a departure time based on when the last-read machine-readable location identification code is read (paragraph 0066);

g. immediately after the departure time is determined in step (f), initiating transmission of the last-read machine readable location identification code and the departure time to the remote server using the wireless transmitter; and

h. adding the departure time to the service information data using the processing module to retrievably store both the departure time and the arrival time in the storage module such that the arrival time and the departure are independently retrievable from the storage module (paragraph 0068).

It would have been obvious to one of ordinary skill in the art to include the business system of Clark with the ability to track and record the arrival and departure time of a person at a particular location as taught by Shotey since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

19. **Claims 2-4 and 14-16** are rejected under the same rationale as claims 1 and 13.

20. As to **claims 5, 17 and 27,** Clark teaches providing at least one of a shift report for the person over a selected time interval, a location report for the location over a selected time interval (column/line 17/28-40).

21. **Claims 6-7, 11-12 and 18-19** are rejected by Clark and Shotey in further view of Wiggins (US 3648243).

22. With respect to **claims 6, 11 and 18**, Clark modified by Shotey teaches the method of tracking time spent at a location. However Clark modified by Shotey does not explicitly teach providing task identifiers association with the location. Wiggins teaches :

i. providing at least one machine-readable task identifier at the location, wherein an associated machine-readable location identification code and associated task identification information are determinable from the at least one machine-readable task identifier, the associated machine-readable location identification code being included in the at least one machine-readable location identification code (abstract, column/line 1/35-42, claim 1);

j. reading the first-read machine-readable location identification code from a first-read machine-readable task identifier in the at least one machine-readable task identifier on arrival of the person at the location (abstract, column/line 1/35-42, claim 1);

k. reading the last-read machine-readable location identification code from a last-read machine-readable task identifier in the at least one machine-readable task identifier on departure of the person from the location (abstract, column/line 1/35-42, claim 1) and

l. the service information data comprises the associated task identification information for each machine-readable task identifier in the at least one machine-readable task identifier at the location (abstract, column/line 1/35-42, claim 1).

It would have been obvious to one of ordinary skill in the art to include the business system of Clark and Shotey with the ability to providing task identifiers association with the location as taught by Wiggins since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

23. **Claims 7 and 19** are rejected under the same rationale as claims 6 and 18.

24. With respect to **claim 12**, Clark teaches one machine-readable location identification code comprises a single code only such that the first-read machine-readable location identification code and the last-read machine-readable location identification code are identical (column/line 16/53-58).

25. **Claims 30 and 31** are rejected by Clark and Shotey in further view of Gonzalez et al (US 2001/0000192).

26. With respect to claims 30 and 31, Clark in view of Shotey teaches the method as defined in claim 1, including determining a first receipt time (paragraph 0064 of Shotey). Clark in view of Shotey does not directly teach generating an alert time. However, Gonzalez teaches generating an alert when the difference between the arrival time and the first receipt time is greater than a threshold value (paragraph 0016, claim 1).

It would have been obvious to one of ordinary skill in the art to include the business system of Clark in view of Shotey with the ability to generate an alert time as taught by Gonzalez since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley B. Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/
Examiner, Art Unit 3624

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624